

Native American Treaty Project

Department of Defense Legacy Resource Management Program

DoD Conservation Conference

Savannah, Georgia

22-27 August 2004



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Army Environmental Programs

OACSIM



Report Documentation Page				Form Approved OMB No. 0704-0188	
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1. REPORT DATE 01 AUG 2004		2. REPORT TYPE N/A		3. DATES COVERED -	
4. TITLE AND SUBTITLE Native American Treaty Project				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Army Environmental Programs OACSIM				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release, distribution unlimited					
13. SUPPLEMENTARY NOTES See also ADM002111. Department of Defense Conservation Conference. Held in Savannah, Georgia on August 22-27, 2004, The original document contains color images.					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT UU	18. NUMBER OF PAGES 28	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			



BACKGROUND

- DoD develops American Indian and Alaska Native Policy, 1998
- Policy directs DoD to undertake actions and manage lands
 - *Consistent with the conservation of protected tribal resources and in recognition of Indian treaty rights to fish, hunt and gather resources at both on and off-reservation locations*



BACKGROUND cont.

- And to accommodate
 - *to the extent practicable and consistent with military training, security, and readiness requirements, tribal member access to sacred and off-reservation treaty fishing, hunting, and gathering sites located on military installations*
- Extent of treaty rights on DoD lands not known
- Legacy fund Native American Treaties Project



LEGACY PROJECT

- Cooperative agreement with NATHPO: National Association of Tribal Historic Preservation Officers
 - Sole sourced based on NATHPO expertise in tribal matters
- Scope of work
 - Report
 - GIS component



PROJECT PURPOSE

- To identify all extant, in-force treaties between Indian tribes and the federal government applicable to installations in the 48 states
- To define the nature and extent of treaty obligations for these installations
- To enhance DoD-tribal relationships and uphold federal legal obligations to tribes



PROJECT PURPOSE, cont.

- Study identifies those treaties with explicitly reserved, land-based, usufructuary rights
- Typically these rights consist of hunting, gathering, fishing rights



CURRENT STATUS

- Currently under review at DoD
- Now available on DENIX
- Will provide a tool for installations to use as part of government-to-government consultation responsibilities



ABOUT TREATIES

- Treaties are contracts between sovereign nations
 - Important component of the political relationship between American Indian tribes and the federal government
- The Constitution gives the President sole power to negotiate treaties, with 2/3 approval of Senate
- Force and effect of federal law



TREATIES WITH TRIBES

- Purpose: tribes grant federal government title to land and establish peaceful relationships in return for protection, goods, services
- Tribes retain rights not specifically ceded to the federal government in treaties
- Some treaties—specifically reserve usufructuary rights for tribes
 - Reserved rights are not grants from the US
 - Can only be extinguished by Congress



TREATIES, cont.

- US negotiated over 500 treaties with tribes before 1871
 - Not all were ratified
- Treaties and tribes do not have 1 on 1 relationship
 - Not every tribe has a treaty
 - Some treaties were made with multiple tribes



TREATIES, cont

- Congress ended treaty making in 1871
- Federal government made agreements with tribes, ratified by Congress and signed into law, have same effect as treaties
 - Included in this study
- Each treaty is unique
 - Represents a unique history of tribal interaction with the federal government, may have unique legal history



TREATIES, cont.

- Cannons of Construction for interpreting tribal treaties
- Courts recognize inequality of negotiation process
- Set forth following standards for interpreting treaties
 - Ambiguities must be resolved in favor of the tribes
 - Indian treaties must be interpreted as Indians would have understood them
 - Indian treaties must be construed liberally in favor of the Indians
 - Reserved rights must be explicitly extinguished by either later treaties or Congressional action



RESEARCH METHODS

- Project team from University of Kansas
- Read 488 treaties and agreements
- Found reserved rights in 71 treaties
- Mapped these land-based rights and compared to DoD installation locations
- Looked at all subsequent treaties negotiated with tribes holding reserved rights to see if rights extinguished



TREATIES, cont

- Searched for legal decisions affecting specific treaties, interpretations, and treaty rights in general
- Limits of the study:
 - Addressed only land-based usufructuary rights, not other treaty obligations
 - Limited to installations listed in 1999 Sikes Report
 - Does not address non-treaty rights or aboriginal rights which may exist outside of specifically reserved rights
 - Tribes may have conflicting views over interpretation of treaties and boundaries



FINDINGS

- 22 treaties that create potential obligations for existing military installations
- These treaties affect 58 installations in 12 states:

– Alabama	Michigan	Oklahoma
– Arkansas	Minnesota	Oregon
– Illinois	Nebraska	Utah
– Indiana	Ohio	Washington

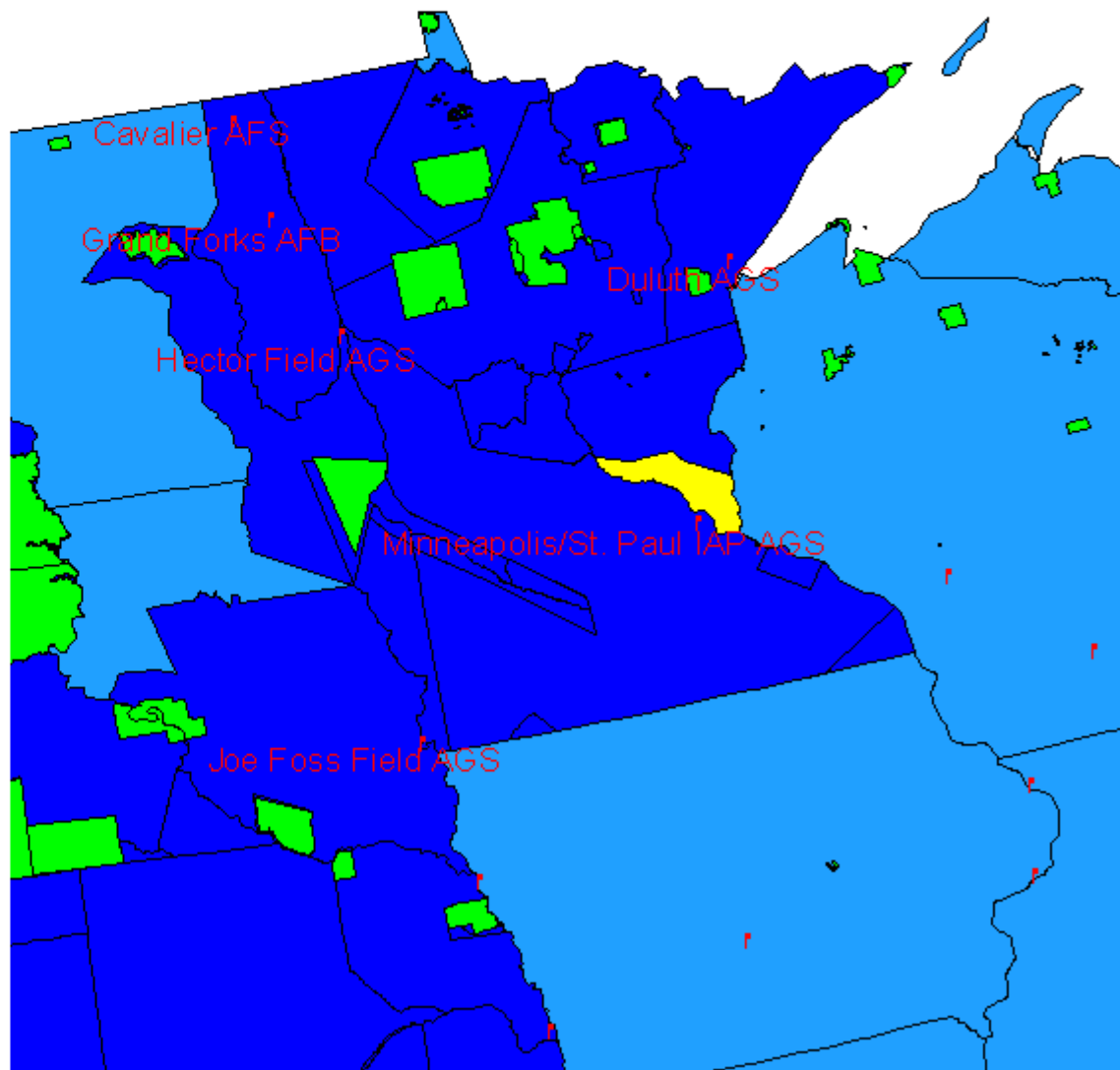
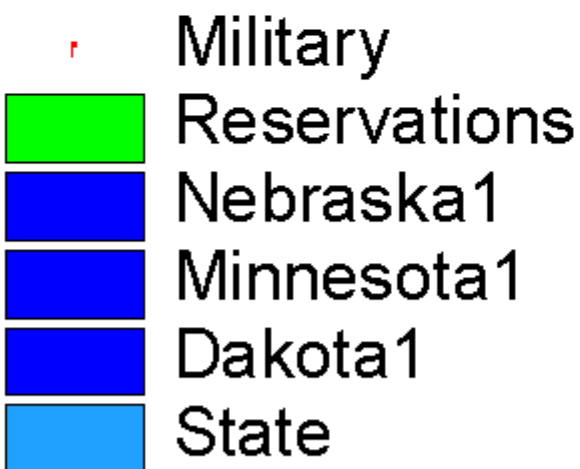


FINDINGS, cont.

- Presentation of Findings
 - Lists for each installation
 - Rights reserved
 - Treaty
 - Treaty tribe(s)
 - Treaty language stipulating the rights
 - All installations listed for the treaty
 - Court decisions located which affect those rights
 - Comments
 - Possible cession of rights in later treaties
- GIS component accompanies report

Type	State	County	Year	Notes
W	Army	Twin Cities AAP	243	Treaty with the Sioux. Sept. 29, 1837
W	Army	Camp Ripley	242	Treaty with the Chippewa. July 29, 1837
W	Air Force	Duluth AGS	332	Treaty with the Chippewa. Sept. 30, 1854
W	Air Force	Minneapolis-St. Paul IAP AGS	289	No # Treaty with the Sioux. Sept 23, 1805

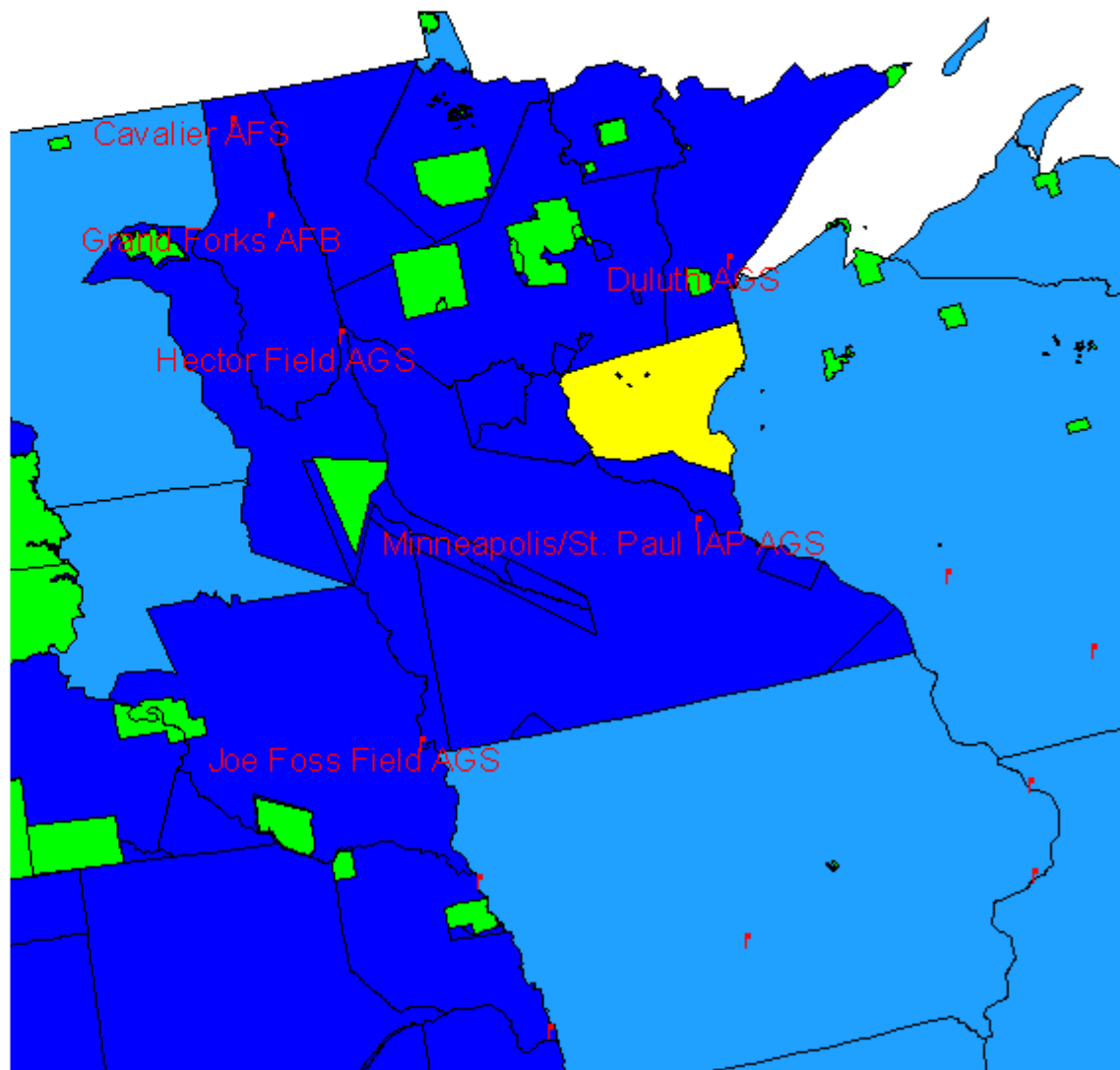
Minnesota 1



	Type	Base Name	Notes	Notes
W	Army	Twin Cities AAP	243	Treaty with the Sioux. Sept. 29, 1837
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Minnesota 2

- r Military
- Reservations
- Nebraska1
- Minnesota1
- Dakota1
- State





IMPLEMENTATION

- This study adds to tools available to installation commanders to assist in meeting federal obligations to tribes
- The report DOES NOT replace the consultation process as dictated by DoD American Indian and Alaska Native Policy
- Affected installations should review their government-to-government consultation policies with reference to treaty obligations
- This may add to existing encroachment issues



FUTURE RESEARCH AND PRODUCTS



- Current Legacy studies in process:
 - Expanded Indian Lands Research for DoD Installations: DoD non-treaty related responsibilities toward tribes who did not enter into treaty relations or have treaties ratified by Congress
 - Guide to Native American Treaty Reserved Rights for Fishing, Hunting and Gathering on Military Lands for Installation Resource Managers



AFFECTED INSTALLATIONS

- This list may be incomplete.
 - Difficulties with treaty language
 - Differing interpretations
- Alabama
 - Redstone Arsenal
- Arkansas
 - Camp Robinson
 - Fort Chaffee
 - Fort Smith AGS
 - Little Rock AFB
 - Pine Bluff Arsenal



AFFECTED INSTALLATIONS

- Illinois
 - Camp Marseilles
 - Charles Melvin Price SPT CTR
 - Chicago ARS
 - Greater Peoria AGS
 - Joliet AAP
 - Rock Island Arsenal
 - Savanna Depot ACT
 - Scott AFB



AFFECTED INSTALLATIONS

- Indiana
 - Crane Div, NAV Surface Warfare Ctr
 - Ft Wayne AGS
 - Hulman AGS
 - Indiana AAP
 - Newport Chem Activity
- Michigan
 - Camp Custer
 - Camp Grayling
 - Detroit Arsenal
 - Selfridge AGB
 - Garrison Selfridge
 - W.K Kellogg AGS



AFFECTED INSTALLATIONS

- Minnesota
 - Camp Ripley
 - Duluth AGS
 - Mpls-St. Paul IAP AGS
- Nebraska
 - Camp Hastings
- Ohio
 - Camp Perry
 - Camp Perry AGS
 - DEF Const. Supply Center
 - Lima Army Tank Plant



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- Ohio, cont. Lima Army Tank Plant
 - Gentile DEF Electronic Supply
 - Mansfield Lahm AGS
 - Ravenna AAP
 - Rickenbacker AGS
 - Springfield-Beckley AGS
 - Toledo Express AGS
 - Wright Patterson AFB
 - Youngston-Warren ARS
 - Oklahoma
 - Altus AFB



AFFECTED INSTALLATIONS

- Oregon
 - Umatilla Depot
- Utah
 - Camp Williams
 - Depot Ogden
 - Dugway Proving Ground
 - Hill AFB
 - Salt Lake City AGS
- Washington
 - Bangor Sub Base
 - Everett NS



AFFECTED INSTALLATIONS

- Washington, cont.
 - Fort Lewis
 - McCord AFB
 - NAS Whidbey IS
 - Navseawarfare
 - Puget Sound NS
 - Strategic Weapon Fac Pac
 - Yakima Firing CTR



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